IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 58/2004

Caitan Fernandes, major, married,
R/o. House No.535, Boutawada,
Assagao, Bardez, Goa. ..... Petitioner.

V/s.

1. State of Goa
through Chief Secretary,
Panaji, Goa.

2. Inspector General of Prisons,
Collectorate, North Goa,
Panaji, Goa.

3. The Superintendent of Prisons,
Central Jail, Aguada, Goa. ..... Respondents.

Mrs. Asha Dessai, Advocate for the petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. S.N. Sardessai, Public Prosecutor for the respondents.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE : 1ST FEBRUARY, 2005.

ORAL JUDGMENT : (Per LAVANDE, J.)

By this petition, the petitioner seeks refund of an amount of Rs.36,113-32 from the respondents.

2. The petitioner was convicted by Judgment and Order dated 31.3.1994 by the Special Judge, NDPS Court, Mapusa, Goa in Special Criminal Case No.19/1993 for having committed an offence punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.1,00,000/- and in default, to suffer S.I. for one year. The appeal preferred by the petitioner was dismissed by this Court on 21.12.1994. Special Leave Petition preferred before the Supreme Court was also dismissed on 5.8.1996.

3. On 27.1.2004, the petitioner had already undergone R.I. for 10 years, as well as the imprisonment for a period of four months and ten days in default of payment of fine. On the same day, the petitioner paid the entire fine amount of Rs.1,00,000/- in the Office of respondent No.3.

4. Mrs. Dessai, learned Counsel appearing for the petitioner submitted that the period of imprisonment undergone by the petitioner in default of payment of fine ought to have been considered for payment of fine by the petitioner in the light of Section 69 of the Indian Penal Code. According to the learned Counsel, on 27.1.2004, an amount of Rs.66,667/- was payable in view of Section 69 of the Indian Penal Code and, therefore, the respondents were not entitled to collect the entire amount of Rs.1,00,000/- , as fine. Placing reliance on Section 69 of the

Indian Penal Code, the learned Counsel submitted that the respondents are bound to refund the amount of Rs.33,333/- which is an excess amount, collected by the respondents.

5. Mr. Nadkarni, the learned Advocate General appearing for the respondents has fairly conceded that the petitioner is entitled to the refund of Rs.33,333/- . He has further submitted that if the petitioner makes an application to respondent No.2, respondent No.2 would refund the amount of Rs.33,333/- , within a reasonable time.

6. We find considerable force in the submission of the learned Counsel appearing for the petitioner. Section 69 of the Indian Penal Code, reads as under :

> " 69. **Termination of imprisonment on payment of proportional part of fine -**
>
> If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate."

7. In view of Section 69, on 27.1.2004 the petitioner was liable to pay fine amount of Rs.66,667/- . Therefore, the respondents were not

entitled to collect the entire fine amount. That being the position, the petitioner is entitled to the refund of Rs.33,333/- from the respondents.

8. In the result, therefore, the petition is allowed. The petitioner is directed to make an application to respondent No.2 for the refund of the amount of Rs.33,333/- and upon such application being made for refund of the said amount, respondent No.2 is directed to refund to the petitioner the amount of Rs.33,333/- within a period of six weeks from the date of application. Rule is made absolute in the aforesaid terms. The parties are directed to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.